



POLLACK SOLOMON DUFFY LLP
485 Madison Avenue, Suite 1301, New York, NY 10022
(212) 493-3100
prakhunov@psdfirm.com

September 30, 2022

VIA ECF

Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Foley Square, Room 2201
New York, NY 10007

Re: *Kitchen Winners NY Inc. v. Rock Fintek LLC*, Case No. 22-cv-05276-PAE
Joint Proposed Preservation Order

Dear Judge Engelmayer:

This firm represents defendant and counterclaim/third-party plaintiff Rock Fintek LLC in the above-captioned matter. Pursuant to the Court's September 7, 2022 and September 14, 2022 Orders, we submit this Joint Proposed Preservation Order with respect to key evidence in this matter consisting of approximately 2,000,000 boxes containing approximately 200,000,000 gloves that are at issue in this litigation.

Proposed Preservation Order

1. Rock Fintek has represented that the gloves at issue in this lawsuit are currently in the physical possession of non-party Ascension Health ("Ascension"), which is currently storing the gloves in warehouses operated by an independent third-party warehouse operator Medline Industries.

2. The parties understand (including from photographs and videos taken in certain of these warehouses that Rock Fintek has produced) that the cases of gloves are stored on pallets in Medline warehouses located in Grayslake, IL, Auburndale, FL, Oklahoma City, OK, Kansas City, MO, Prattville, AL, Katy, TX, Perryville, MD, Romulus, MI, Mount Juliet, TN, Middletown, NY, and Jeffersonville, IN.

3. Ascension, through its counsel, has stated its position that unless the gloves are promptly removed from the warehouses through, for example, a sale to a third-party, it intends to donate or otherwise dispose of the gloves as soon as it can make logistical arrangements to do so. Ascension's counsel has stated that Ascension expects those arrangements to take no less than thirty (30) days.

4. In order to preserve a statistically sufficient amount evidence for use in this litigation, at the time of the removal of gloves from the Medline warehouses (whether as part of a sale, donation or other disposition), the parties shall cooperate to hire an independent third party to remove one (1) case (containing 10 boxes) of gloves from each pallet at the time of removal of any given pallet from any given warehouse. To the extent that the parties are unable to agree on one independent third party to conduct the preservation effort, each party shall be entitled to hire its own third party at its own expense.

5. The preservation process shall be documented by video.

6. The parties shall instruct the independent third party to document by video and in writing the identifying information for each pallet from which each preserved case of gloves originated, such that each case of gloves can be traced back to the pallet from which it originated. To the extent that bills of lading or other identifying documentation is attached to a particular pallet, such documents shall also be preserved and a record shall be made of which pallet each such document came from. The parties shall also instruct the independent third party to document by video, to the extent possible, the location of the pallets in each warehouse such that the parties can determine the row and shelf of any given pallet.

7. To the extent that any of the parties wish to inspect the entire inventory of gloves prior to removal or disposal, the parties shall reasonably cooperate in good faith to make logistical arrangements to do so.

8. The collected preserved samples of gloves shall be stored in a secure manner, shall not be tampered with, and the parties shall cooperate to make those gloves reasonably available to all parties for further sampling and testing. The parties do not waive the right to seek further relief from the Court in the event that any dispute arises over these preservation matters.

9. Accordingly, the parties respectfully request that the Court approve and endorse this proposed preservation order.

Respectfully submitted,

/s/Phillip Rakhunov
Phillip Rakhunov

cc: All counsel (via ECF)